

L.N. 283 of 2015

**AIRPORTS AND CIVIL AVIATION (SECURITY) ACT
(CAP. 405)**

Civil Aviation Security (Amendment) Regulations, 2015

IN exercise of the powers conferred by article 3(1) of the Airports and Civil Aviation (Security) Act, the Minister for Home Affairs and National Security, has made the following regulations:-

1. (1) The title of these regulations is the Civil Aviation Security (Amendment) Regulations, 2015, and these regulations shall be read and construed as one with the Civil Aviation Security Regulations, hereinafter referred to as the "principal regulations".

Citation and scope.

S.L. 405.03

(2) These regulations provide for the implementation of the provisions of Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security, hereinafter referred to as the "Principal Regulation".

2. Regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) immediately after the definition "the Act", there shall be added the following new definition:

" "acts of unlawful interference" means those acts or attempted acts which jeopardize or may jeopardize the safety of civil aviation, including but not limited to unlawful seizure of an aircraft, destruction of an aircraft in service, hostage-taking on board an aircraft or on aerodromes, forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility, introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes, use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment, communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility;"

(b) the definition "air carrier" shall be substituted by the

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following new definition:

" "air carrier" means an air transport undertaking holding a valid operating licence or equivalent;";

(c) the definition "airport" shall be substituted by the following new definition:

" "airport" shall have the same meaning as that assigned to it by article 2 of the Act;";

(d) the definition "airport operator" shall be substituted by the following new definition:

" "airport operator", in relation to an airport, means the person, organisation or enterprise engaged in the management of an airport at the time;

(e) immediately after the definition "airport operator" there shall be added the following new definition:

" "appropriate authority" means the national authority designated by the Minister to be responsible for the coordination and monitoring of the implementation of the common basic standards referred to in Article 4 of the Principal Regulation and for the coordination and monitoring of the implementation of Malta's National Civil Aviation Security Programme;";

(f) immediately after the definition "Chicago Convention" there shall be added the following new definitions:

" "civil aviation" means any air operation carried out by civil aircraft and excluding operations carried out by State aircraft;

"common basic standards" means the Community rules intended to protect civil aviation against acts of unlawful interference that jeopardise the security of civil aviation;

"compliance monitoring activities" means any procedure or process used for assessing the implementation of the National Civil Aviation Security Programme;

"deficiency" means a failure to comply with an aviation security measure;";

(g) the definition "ECAC" and the definition "ECAC Document 30" shall be deleted;

(h) immediately after the new definition "deficiency" there shall be added the following new definitions:

"entity" means a person, organisation or enterprise, other than an operator, including but not limited to regulated agents, regulated suppliers, known consignors and known suppliers;

"Head Aviation Security" shall have the same meaning as that assigned to it by article 2 of the Act;

"known consignor" means a consignor who originates cargo or mail for its own account and whose procedures meet common security rules and standards sufficient to allow carriage of cargo or mail on any aircraft;

"known supplier" means a supplier whose procedures meet common security rules and standards sufficient to allow delivery of supplies to security restricted areas of airports, air carriers or regulated suppliers, but not directly to aircraft;";

(i) the definition "Manager Airport Security" shall be deleted;

(j) immediately after the new definition "known supplier" there shall be added the following new definitions:

"National Civil Aviation Security Programme" means the document with details of aviation security measures, regulations, responsibilities and acceptable means of compliance that are necessary to protect passengers, crew, ground personnel and the general public from acts of unlawful interference with civil aviation;

"operator" means a person, organisation or enterprise engaged, or offering to engage, in an air transport operation;

"Principal Regulation" means Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security;

"regulated agent" means an agent, freight

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forwarder or any other entity which ensures security controls in respect of cargo or mail;

"regulated supplier" means a supplier whose procedures meet common security rules and standards sufficient to allow delivery of supplies directly to an aircraft;"

(k) the definition "security measures" shall be substituted by the following new definition:

" "security measures" means those aviation measures intended to implement the common basic standards which measures are included in the National Civil Aviation Security Programme and based on Commission Regulation (EU) 185/2010 and Commission Decision 2010/774/EU as amended.".

Adds new regulation 2A to the principal regulations.

3. Immediately after regulation 2 of the principal regulations, there shall be added the following new regulation:

"Appropriate authority.

2A. The Head Aviation Security and his department shall be the appropriate authority for Civil Aviation Security in Malta.".

Substitutes regulation 3 of the principal regulations.

4. Regulation 3 of the principal regulations shall be substituted by the following:

"Common standards.

3. (1) The common basic standards to be applied in airports shall be included in the National Civil Aviation Security Programme and shall be based on Annex 17 to the Chicago Convention and the Principal Regulation:

(2) The Aviation Security Committee shall ensure the application of the common basic standards referred to in the Principal Regulation. Where the Head Aviation Security has reason to believe that the level of aviation security has been compromised through a security breach, it shall ensure that appropriate and prompt action is taken to rectify that breach and ensure the continuing security of civil aviation.".

Substitutes regulation 4 of the principal regulations.

5. Regulation 4 of the principal regulations shall be substituted by the following:

"Alternative security measures.

4. The Aviation Security Committee may instruct the Head Aviation Security to derogate from the common basic standards referred to in the Principal Regulation and adopt alternative security measures that provide an adequate level of protection on the basis of a local risk assessment at airports or demarcated areas of airports in accordance with criteria listed in the National Civil Aviation Security Programme:

Provided that alternative security measures shall be justified by reasons relating to the size of the aircraft, or by reasons relating to the nature, scale or frequency of operations or of other relevant activities. The Head Aviation Security shall inform the Commission of such measures."

6. Regulation 5 of the principal regulations shall be substituted by the following:

Substitutes regulation 5 of the principal regulations.

"More stringent measures.

5. (1) The Aviation Security Committee may instruct the Head Aviation Security to apply more stringent measures than the common basic standards referred to in the Principal Regulation. The Aviation Security Committee shall act on the basis of a risk assessment and in compliance with Community law. The measures shall be relevant, objective, non-discriminatory and proportional to the risk that is being addressed.

(2) The Head Aviation Security shall inform the Commission of such measures as soon as possible after their application:

Provided that this shall not be required where the measures concerned are limited to a given flight on a specific date."

7. Immediately after regulation 5 of the principal regulations, there shall be inserted the following new regulations:

Adds new regulations to the principal regulations.

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"National Civil
Aviation
Security
Programme.

6. (1) The Head Aviation Security shall draw up, apply and maintain a National Civil Aviation Security Programme. The programme shall define the responsibilities for the implementation of the common basic standards referred to in the Principal Regulation and shall describe the security measures required and which are to be adhered to by operators and entities for this purpose. The Aviation Security Committee shall approve the National Civil Aviation Security Programme before the Head Aviation Security commences to apply it.

(2) The Head Aviation Security shall make available in writing on a 'need to know' basis the appropriate parts of its national civil aviation security programme to operators and entities which it deems to have a legitimate interest.

National Civil
Aviation
Security
Quality Control
Programme.

7. (1) The Head Aviation Security shall draw up, apply and maintain a National Civil Aviation Security Quality Control Programme. The programme shall enable the Head Aviation Security to check the quality of civil aviation security in order to monitor compliance both with the Principal Regulation and with the National Civil Aviation Security Programme. The Aviation Security Committee shall approve the programme before the Head Aviation Security commences to apply the National Civil Aviation Security Quality Control Programme.

(2) The National Civil Aviation Security Quality Control Programme shall allow for the swift detection and correction of deficiencies:

Provided that all airports, operators and entities responsible for the implementation of aviation security measures shall be regularly monitored by the Head Aviation Security or a public officer designated by him.

National Civil
Aviation
Security
Training
Programme.

8. The Head Aviation Security shall draw up, apply and maintain a National Civil Aviation Security Training Programme. The Aviation Security Committee shall approve the programme before the Head Aviation Security commences to apply the said programme.

Airport
Operator
Security
Programme.

9. (1) Every airport operator shall draw up, apply and maintain an Airport Operator Security Programme. The programme shall describe the methods and procedures which are to be followed by the airport operator in order to comply both with the Principal Regulation and with the National Civil Aviation Security Programme.

(2) The programme shall include internal quality control provisions describing how compliance with these methods and procedures is to be monitored by the airport operator.

(3) The airport security programme shall be submitted to the Head Aviation Security, which may either approve it or direct the airport operator to make necessary amendments.

Air Carrier
Security
Programme.

10. (1) Every air carrier with a Maltese operating license shall draw up, apply and maintain an Air Carrier Security Programme. The programme shall describe the methods and procedures which are to be followed by the air carrier in order to comply both with the Principal Regulation and with the National Civil Aviation Security Programme. The programme shall include internal quality control provisions describing how compliance with these methods and procedures is to be monitored by the air carrier.

(2) The Air Carrier Security Programme shall be submitted to the Head Aviation Security, which may either approve it or direct the airport operator to make necessary amendments.

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(3) The Head Aviation Security shall recognise the security programme of a Community air carrier that has been approved by the appropriate authority of the Member State granting the operating licence. This is without prejudice to the Head Aviation Security's right to request from any air carrier details of its implementation of:

(a) the security measures applied by the appropriate authority under article 4; and, or

(b) local procedures that are applicable at the airports served.

Entity Security Programme.

11. (1) Every entity required under the National Civil Aviation Security Programme to apply aviation security measures shall draw up, apply and maintain an Entity Security Programme. The programme shall describe the methods and procedures which are to be followed by the entity in order to comply with the National Civil Aviation Security Programme. The programme shall include internal quality control provisions describing how compliance with these methods and procedures is to be monitored by the entity itself.

(2) The entity security programme shall be submitted to the Head Aviation Security, which may either approve it or direct the entity to make necessary amendments.

Monitoring.

12. The Aviation Security Committee shall ensure that airport operators, air carriers and entities providing services from Malta establish, implement and maintain security programmes appropriate to meet the requirements of the National Civil Aviation Security Programme. These security programmes shall be monitored and regularly audited by the Head Aviation Security.

Classification of findings by the Head Aviation Security.

13. (1) The Head Aviation Security, after carrying out an audit or other compliance monitoring activity on an entity, airport operator and, or air carrier, shall draw up a report wherein he shall state the findings.

(2) The Head Aviation Security shall classify these findings into one of the following four categories:

- (a) fully compliant;
- (b) compliant but improvement desired;
- (c) not compliant; or
- (d) not compliant with serious deficiencies:

Provided that the Head Aviation Security shall give reasons for his decision to classify the findings as such.

(3) The report shall be communicated to the entity, airport operator and, or air carrier.

Non-compliance with the National Civil Aviation Security Programme.

14. (1) If the findings mentioned in regulation 13 are classified by the Head Aviation Security as being 'not complaint' or 'not compliant with serious deficiencies' in terms of regulations 13(2)(c) or 13(2)(d) respectively, the entity, airport operator and, or air carrier shall, within two weeks from receipt of the report, submit an action plan wherein there shall be indicated the corrective actions which are to be taken by the entity, airport operator and, or air carrier in order to address its deficiencies including the deadlines when such deficiencies shall be fully rectified.

(2) The Head Aviation Security shall examine the action plan and may either approve it or direct the entity, airport operator and, or air carrier concerned to make the necessary amendments within a stipulated period of time.

(3) The implementation of the action plan shall be monitored by the Head Aviation Security.

Failure to correct deficiencies found by the Head Aviation Security.

15. If an entity, airport operator and, or air carrier fails to submit an action plan, fails to make the necessary amendments to the action plan or fails to comply with the approved action plan, the Head Aviation Security may, depending on the severity and the particular circumstances of the case:

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(a) give advice or make recommendations to the entity, airport operator and, or air carrier in order to explain the need to rectify the deficiencies identified during the compliance monitoring activities; and, or

(b) issue a formal warning whereby he directs the entity, airport operator and, or air carrier to immediately rectify its deficiencies:

Provided that the Head Aviation Security shall inform the entity, airport operator and, or air carrier that failure to rectify its deficiencies may lead to the imposition of administrative fines in terms of these regulations; and, or

(c) report the deficiencies to the Aviation Security Committee.

Aviation
Security
Committee to
impose
administrative
fines.

16. (1) The Aviation Security Committee shall have the power to impose administrative fines established by these regulations, on any entity, airport operator and, or air carrier reported by the Head Aviation Security, as being non-compliant with the National Civil Aviation Security Programme.

(2) Prior to deciding on whether an entity, airport operator and, or air carrier are compliant with the National Civil Aviation Security Programme or not, the Aviation Security Committee shall allow the entity, airport operator and, or air carrier concerned to provide documentation or make submissions as it deems fit.

(3) The Aviation Security Committee may, if it deems necessary, ask for more information or documentation from the Head Aviation Security or from the entity, airport operator and, or air carrier concerned.

(4) The Aviation Security Committee shall give reasons for its decision.

Administrative
fines.

17. (1) Whenever the Aviation Security Committee finds that an entity, airport operator and, or air carrier has not complied with the National Civil Aviation Security Programme and, or has not taken the necessary measures in terms of these regulations or in terms of the Principal Regulation to remedy its deficiencies, it shall impose an administrative fine as provided for in the Schedule.

(2) In its decision the Aviation Security Committee shall provide a time-frame within which the entity, airport operator and, or air carrier is to pay the administrative fine and a time-frame within which the entity, airport operator and, or air carrier is to remedy its deficiencies:

Provided that if the entity, airport operator and, or air carrier does not pay the administrative fine and, or does not remedy its deficiencies within the stipulated time-frame, the Aviation Security Committee shall impose a further administrative fine equal to the administrative fine originally imposed:

Provided further that if the entity, airport operator and, or air carrier has remedied its deficiencies but has not yet paid the administrative fine or if the entity, airport operator and, or air carrier has paid the administrative fine but has not yet remedied its deficiencies, the further administrative fine imposed by the Aviation Security Committee shall be equivalent to half the original fine.

Right of
appeal.

18. (1) Any decision taken by the Aviation Security Committee in terms of regulation 17 may be contested within twenty days from the notification of the decision by means of an application filed before the Administrative Review Tribunal.

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Cap. 12. (2) Any party to an appeal who feels aggrieved by a decision of the Administrative Review Tribunal may, on a question of law, appeal from such decision by filing an application to the Court of Appeal constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure. Such application shall be filed within twenty days from the date of the decision of the Administrative Review Tribunal.

Debt recovery
procedure.
Cap. 12.

19. The provisions of article 466 of the Code of Organization and Civil Procedure, shall, *mutatis mutandis*, apply to the administrative fines established by these regulations."

Adds a schedule
to the principal
regulations.

8. Immediately after the new regulation 19, there shall be added the following new schedule:

"Schedule

Administrative Fines

National Civil Aviation Security Programme	Fine (€)	
	Entity and, or operator found to be non-complaint in terms of regulation 13(2)(c)	Entity and, or operator found to be non-complaint in terms of regulation 13(2)(d)
1. Airport security	-	-
1.1 Airport planning requirements	250	500
1.2 Access control	500	1000
1.3 Screening of persons other than passengers and items carried and the relevant elements of security equipment	500	1000
1.4 Examination of vehicles	500	1000
1.5 Surveillance, patrols and other physical controls	250	500
2. Demarcated areas of airports	-	-
3. Aircraft security	-	-
3.1 Aircraft security search	250	500
3.2 Aircraft protection	250	500
4. Passengers and cabin baggage	-	-
4.1 Screening of passengers and cabin baggage and the relevant elements of security equipment	500	1000

4.2 Protection of passengers and cabin baggage	250	500
4.3 Potentially disruptive passengers	250	500
5. Hold baggage	-	-
5.1 Screening of hold baggage and the relevant elements of security equipment	500	1000
5.2 Protection of hold baggage	250	500
5.3 Baggage reconciliation	250	500
6. Cargo and mail	-	-
6.2 All provisions relating to screening and the relevant elements of security equipment	250	500
6.3 All provisions relating to security controls applied by a regulated agent	250	500
6.4 All provisions relating to security controls applied by known consignors	250	500
6.5 All provisions relating to the protection of cargo and mail at airports and during transportation	250	500
7. Air carrier mail and air carrier materials	250	500
8. In-flight supplies	500	1000
9. Airport supplies	500	1000
10. In-flight security measures	250	1000
11. Staff recruitment and training	-	-
11.1. All provisions relating to staff recruitment at airport, air carrier, entity and, or operator	250	500
11.2 All provisions relating to staff training at an airport, air carrier, entity and, or operator	250	500

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